

August 28, 2009

Commissioner Mark Holsten
Minnesota Department of Natural Resources
Box 47
500 Lafayette Road
St. Paul, Minnesota 55155-4047

Re: *In the Matter of the Invasive Species/Infested Waters Civil Citation
Issued to Jeffrey Dean Marquardt, Citation No. 123745
OAH Docket No. 3-2000-20685-2*

Dear Commissioner Holsten:

The above-entitled matter came on for a prehearing telephone conference call at 4:30 p.m. on August 26, 2009. The Administrative Law Judge, Conservation Officer Mike Lee, and Jeff Marquardt participated in the telephone conference. The parties agreed that no formal hearing would be needed and that the ALJ would make a recommendation in this matter based on the record created during the telephone conference.

The material facts are not disputed. On May 23, 2009, Mr. Marquardt was fishing on Lake Mille Lacs. At about 10:00 p.m., he pulled his 18-foot fishing boat from the water at the landing in Isle, Minnesota, and went to a nearby restaurant to eat. After eating, he drove south on Highway 47. He was still in the vicinity of Isle when he was stopped by a local law enforcement officer because the lights on his trailer were not working properly. Conservation Officer Mike Lee stopped at the scene. Officer Lee observed that the plug on the hull of Mr. Marquardt's boat was in place. He asked Mr. Marquardt to pull the plugs on the hull and the live well. No water drained from the hull, but there was about an inch of water in the live well that drained into the roadway. Officer Lee issued a citation for failure to drain water before leaving infested waters, pursuant to Minn. Stat. § 84D.13, subd. 4 (2008).

Conservation officers are authorized to issue warnings or citations to a person who fails to drain water, as required by rule, from watercraft and

equipment before leaving designated zebra mussel, spiny water flea, or other invasive plankton infested waters. See Minn. Stat. § 84D.13, subd. 4. A person leaving infested waters designated as having populations of zebra mussel or spiny water flea must drain bait containers, other boating-related equipment holding water (excluding marine sanitary systems), and livewells and bilges by removing the drain plug before transporting the watercraft and associated equipment on public roads.¹ Lake Mille Lacs is a body of water that is designated as being infested with zebra mussels.²

Mr. Marquardt acknowledged in a straightforward manner that he was not aware at the time of this incident that he was obliged to drain water from the livewell before transporting his boat. This is the first year he has had a boat with a livewell. He agrees with the policy behind the rule and contends that, because this was an educational experience for him, the officer should have issued a warning instead of a citation. In response, Officer Lee stated that the Department went through three years of intensive effort to educate boaters about this requirement, but at the time the citation was issued there was a zero-tolerance policy regarding Lake Mille Lacs, and everyone in similar circumstances was issued a citation that evening in lieu of a warning.

The Department has substantiated the violation and citation, and the Administrative Law Judge accordingly recommends that the Commissioner affirm civil trespass citation # 123745 and require Mr. Marquardt to pay the \$50 fine. I am closing our file in this matter and returning the record. Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner must wait at least five days after receipt of this recommendation before making a final decision. Within those five days, Mr. Marquardt may comment on this recommendation. The Commissioner must send a copy of the final decision to Mr. Marquardt. If the Commissioner fails to act within 90 days after the record before the Commissioner closes, this recommendation will become the final decision in this matter.

Sincerely,

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Encl.

cc: COL Jim Konrad
C.O. Mike Lee
Mr. Jeffrey Marquardt

¹ Minn. R. 6216.0500, subp. 3 (2007).

² Minn. R. 6216.0350, subp. 10 C (1).